IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5736 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

ABDUL MAJID HAJI LATIF & ORS

Versus

URBAN LAND CEILING TRIBUNAL AND THE SECRETARY & ANR

Appearance:

Kum. V.P. Shah, Senior Advocate, with Kum.K.J. Brahmabhatt, Advocate, for the Petitioners

Shri A.G. Uraizee, Assistant Government Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/08/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Vadodara (respondent No. 2 herein) on 8th January 1985 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in

appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 1 herein) on 22nd April 1996 in Appeal No. Vadodara-50 of 1995 is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of one Haji Latif Haji Abdul Rehman (the deceased for convenience) to be in excess of the ceiling limit by 6243 square meters.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Vadodara. It was duly processed by respondent No. 2. After observing necessary formalities under sec. 8 of the Act, by his order passed on 8th January 1985 under sub-section (4) thereof, respondent No. 2 declared the holding of the deceased to be in excess of the ceiling limit by 6243 square meters. Its copy is at Annexure B to this petition. The deceased carried the matter in appeal before respondent No. 1. It came to be registered as Appeal No. 33 of 1985. During the pendency of the aforesaid appeal, the deceased breathed his last on 9th May 1989. Unmindful of the fact of the death of the deceased, by the order passed on 27th April 1992 in the aforesaid appeal, respondent No. 1 dismissed it. That aggrieved the present petitioners. They thereupon moved this Court by means of a writ petition under Art. 226 of the Constitution of India. It came to be registered as Special Civil Application No. 5850 of 1995. By its judgment rendered on 31st August 1995 in the aforesaid writ petition, this Court set aside the aforesaid order passed by respondent No. 1 on 27th April 1992 and remanded the matter to respondent No. 1 for deciding the appeal afresh after bringing the heirs of the deceased on record. It appears that thereupon the appeal was restored and it was re-renumbered as Appeal No. Vadodara-50 of 1995 bringing the present petitioners on record of the appeal as the heirs and legal representatives of the deceased. After hearing the parties, by the order passed on 22nd April 1996 in the aforesaid appeal, respondent No. 1 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. Learned Assistant Government Pleader Shri Uraizee is right in his submission that the property in the hands

of the deceased cannot be said to be joint family property. The concept of the joint family property is foreign to the law applicable to Muslims. It cannot be gainsaid that the deceased was a Muslim. Besides, it is found by the authorities below that he had purchased the properties in question. In that case the properties were his self-acquired properties.

4. Learned Counsel Kum. Shah for the petitioners is however justified in her submission that the benefit of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465 should have been given in the present case. As rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondents, the applicability of the aforesaid binding ruling of the Supreme Court would depend upon certain fact-situation. It is true that the attention of the authorities below could not be focussed on the applicability of the aforesaid binding ruling of the Supreme Court. However, since the question goes to the root of the matter and since the question was raised before respondent No. 1 as found mentioned in the appellate order at Annexure C to this petition, it would be necessary to examine it in this case.

5. It cannot be gainsaid that the applicability of the aforesaid binding ruling of the Supreme Court would depend upon answers to the following three questions:

(i) Was a master plan answering its definition contained in sec. 2(h) of the Act in existence in the area in question on the date of commencement of the Act?

(ii) What was the situation of the lands in question therein if it was found to be in existence?

(iii) Were agricultural operations in fact carried on therein on the date of commencement of the Act.

The aforesaid three questions can be answered on the basis of the material on record. It is a sort of fact-finding inquiry. This can better be done by respondent No. 2. It would therefore be desirable to remand the matter to respondent No. 2 for the purpose. The impugned orders at Annexures B and C to this petition will have therefore be quashed and set aside.

6. Learned Counsel Kum. Shah for the petitioners

has submitted that an application for exemption under sec. 20(1) of the Act is pending qua the lands in question. This contention appears to have been taken before respondent No. 1 and it was brushed aside on the ground that the petitioners could not show material to the effect that an application for exemption is pending. It would be open to the petitioners to bring that material on record before respondent No. 2 after the proceedings are taken up afresh for decision on merits. It would be desirable on the part of the petitioners to remind the State Government regarding pendency of the application for exemption for its expeditious disposal.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Vadodara (respondent No. 2 herein) on 8th January 1985 at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 22nd April 1996 in Appeal No. Vadodara-50 of 1995 at Annexure C to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
